IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA Plaintiff, vs. DENIS MCBRIDE, Defendant.	)	CIVIL ACTION NO. 91-C-791-E

AGREED JUDGMENT AND ORDER OF PAYMENT

Plaintiff, the United States of America, having filed its Complaint herein, and the defendant, having consented to the making and entry of this Judgment without trial, hereby agree as follows:

1. This Court has jurisdiction over the subject matter of this litigation and over all parties thereto. The Complaint filed herein states a claim upon which relief can be granted.

2. The defendant hereby acknowledges and accepts service of the Complaint filed herein.

3. The defendant hereby agrees to the entry of Judgment in the principal sum of $27,336.79, accrued interest in the amount of $1,515.55, plus interest at the rate of 4% per annum, plus interest thereafter at the legal rate until paid, plus costs of this action, until paid in full.

4. Plaintiff's consent to the entry of this Judgment and Order of Payment is based upon certain financial information which defendant has provided it and the defendant's express representation to Plaintiff that he is unable to presently pay

the amount of indebtedness in full and the further representation of the defendant that he will well and truly honor and comply with the Order of Payment entered herein which provides terms and conditions for the defendant's payment of the Judgment, together with costs and accrued interest, in regular monthly installment payments, as follows:

(a) Beginning on or before the 15th day of January, 1993, the defendant shall tender to the United States a check or money order payable to the U.S. Department of Justice, in the amount of $500.00, and a like sum on or before the same day of each following month until the entire amount of the Judgment, together with the costs and accrued postjudgment interest, is paid in full.

(b) The defendant shall mail each monthly installment payment to: United States Attorney, Debt Collection Unit, 3600 U.S. Courthouse, 333 West 4th Street, Tulsa, Oklahoma 74103.

(c) Each said payment made by defendant shall be applied in accordance with the U.S. Rules, i.e., first to the payment of costs, second to the payment of postjudgment interest (as provided by 28 U.S.C. § 1961) accrued to the date of the receipt of said payment, and the balance, if any, to the principal.

4. Default under the terms of this Agreed Judgment will entitle the United States to execute on this Judgment without notice to the defendant.

5. The defendant has the right of prepayment of this debt without penalty.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment against the Defendant, Denis McBride, in the principal amount of $27,336.79, accrued interest in the amount of $1,515.55, interest at the rate of 4% per annum, plus interest thereafter at the current legal rate of 4.98 percent per annum until paid, plus the costs of this action.

S/ JAMES O. ELLISON

UNITED STATES DISTRICT JUDGE

APPROVED AS TO FORM:

TONY M. GRAHAM
United States Attorney

KATHLEEN BLISS ADAMS, OBA #13625
Assistant United States Attorney

DENIS MCBRIDE,
Debtor

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

BANK OF OKLAHOMA, NATIONAL ASSOCIATION, a national banking association, in its capacity as Trustee of the Cleveland County Home Loan Authority,	)	FILED
Plaintiff,	)	NOV 27 1991
vs.	)	Case No. 91-C-337-E
NATIONAL FIRE INSURANCE COMPANY OF HARTFORD, a Connecticut corporation,	)	
Defendant.	)	

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

JOURNAL ENTRY OF JUDGMENT

Pursuant to the provisions of Rule 68, Federal Rules of Civil Procedure, there having been filed with the Court a Notice of Acceptance of Offer to Confess Judgment, said Notice having been filed on November 27, 1991, including a copy of an Offer to Confess Judgment served upon the Plaintiff on November 21, 1991, and for good cause shown,

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the Plaintiff, Bank of Oklahoma, National Association, a national banking association, in its capacity as Trustee of the Cleveland County Home Loan Authority, have and recover a judgment against the Defendant, National Fire Insurance Company of Hartford, a Connecticut corporation, in the sum of $50,001.00, plus, if allowable under the Mortgage Servicer Indemnity Bond and the laws of the State of Oklahoma, and if determined by the Court to be reasonable and allowable, reasonable attorneys' fees and reasonable costs, if any.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Plaintiff, if desirous of recovering any attorneys' fees and costs, forthwith comply with the provisions of Rule 6, Rules of the United States District Court for the Northern District of Oklahoma.

Clerk of the United States
District Court for the Northern
District of Oklahoma
Richard M. Lawrence, Clerk
By J. Adams, Deputy

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

BANK OF OKLAHOMA, NATIONAL ASSOCIATION, a national banking association, in its capacity as Trustee of the Cleveland County Home Loan Authority,	)	
Plaintiff,	)	
vs.	)	Case No. 91-C-337-E
NATIONAL FIRE INSURANCE COMPANY OF HARTFORD, a Connecticut corporation,	)	
Defendant.	)	

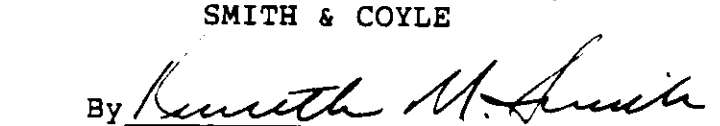
NOTICE OF ACCEPTANCE
OF OFFER TO CONFESS JUDGMENT

COMES now Bank of Oklahoma, National Association, a national banking association, in its capacity as Trustee of the Cleveland County Home Loan Authority ("BOk"), and hereby notifies National Fire Insurance Company of Hartford that BOk accepts the offer to confess judgment in the above referenced matter. Attached hereto as Exhibit "A" and incorporated by reference is a true and correct copy of the Offer To Confess Judgment.

Upon the filing of this Acceptance of Offer To Confess Judgment, the Plaintiff, BOk, requests that the Clerk, pursuant to Rule 68, Federal Rules of Civil Procedure, enter judgment in this cause accordingly.

DATED this 26th day of November, 1991.

ROBINSON, LEWIS, ORBISON,
SMITH & COYLE

By 

Kenneth M. Smith, OBA #8374
P. O. Box 1046
Tulsa, Oklahoma 74103
(918) 583-1232
Attorneys for Plaintiff

CERTIFICATE OF SERVICE

The undersigned certifies that on the 26th day of November, 1991, a true and correct copy of the above and foregoing instrument was hand delivered to: James P. McCann, Kathy R. Neal, Doerner, Stuart, Saunders, Daniel & Anderson, 320 South Boston, Suite 500, Tulsa, Oklahoma 74103.

Kenneth M. Smith

Kenneth M. Smith

131Smith-P

Exhibit "A"

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

BANK OF OKLAHOMA, NATIONAL ASSOCIATION, a national banking association, in its capacity as Trustee of the Cleveland County Home Loan Authority,	)	
Plaintiff,	)	
vs.	)	Case No. 91-C-337-E
NATIONAL FIRE INSURANCE COMPANY OF HARTFORD, a Connecticut corporation,	)	
Defendant.	)	

OFFER TO CONFESS JUDGMENT

National Fire Insurance Company of Hartford, pursuant to the provisions of Rule 68, Federal Rules of Civil Procedure, hereby offers to confess judgment in the above-referenced matter for the sum of $50,001.00, plus, if allowable under the Mortgage Servicer Indemnity Bond and the laws of the State of Oklahoma, and if determined by the Court to be reasonable and allowable, reasonable attorneys' fees and reasonable costs, if any.

DOERNER, STUART, SAUNDERS,
DANIEL & ANDERSON

James P. McCann (OBA#5865)
Kathy R. Neal (OBA#674)
320 S. Boston, Suite 500
Tulsa, Oklahoma 74103
(918) 582-1211

Attorneys for Defendant,
National Fire Insurance
Company of Hartford

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 21st day of November, 1991, a true and correct copy of the above and foregoing instrument was hand-delivered to:

Kenneth M. Smith, Esq.
Beverly A. Stewart, Esq.
Robinson, Lewis, Orbison,
Smith & Coyle
1500 One Williams Center
Tulsa, OK 74101

James P. McCann

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

TERALD DOUGLAS	)	
	)	
Plaintiff,	)	
	)	
V.	)	CASE NO. 90-C-230-B
	)	
COOPER INDUSTRIES, INC.	)	
	)	
Defendant.	)	

J U D G M E N T

In accordance with the jury verdict rendered this date, Judgment is hereby entered in favor of Defendant, Cooper Industries, Inc., and against Plaintiff, Terald Douglas. Plaintiff shall take nothing on his claims against Defendant. Costs are assessed against Plaintiff if timely applied for under Local Rule 6.

DATED THIS 27th day of November, 1991.

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

entered

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

BONNIE PERRY, and ROBERT PERRY, Husband and Wife,	)	
Plaintiffs,	)	
vs.	)	No. 90-C-351-B
KOCH ENGINEERING, INC., a Kansas corporation; ERIC SCHLUMPF, an Individual, and JOHN VAN GELDER, an Individual.	)	
Defendants.	)	

FILED

NOV 27 1991

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

JOINT STIPULATION OF DISMISSAL AS TO PLAINTIFFS' SECOND CAUSE OF ACTION FOR TORTIOUS INTERFERENCE WITH AN ADVANTAGEOUS RELATIONSHIP

COMES NOW, the remaining Plaintiffs and Defendants in the above styled and docketed matter pursuant to Rule1 41(a)(1)(ii) and files their stipulation of dismissal as to Plaintiffs' second cause of action for tortious interference with an advantageous relationship which dismissal is without prejudice.

Respectfully submitted,

By _____
Gary L. Richardson, O.B.A. #7547
Ronald E. Hignight, O.B.A. #10334
RICHARDSON, MEIER & ASSOCIATES, P.C.
5727 South Lewis, Suite 520
Tulsa, Oklahoma 74105
(918) 492-7674

By _____
Mr. Larry Leonard
Ms. Marcia Scott
ZARBANO, BRIDGER-RILEY,
LEONARD & SCOTT
5051 South Lewis
Tulsa, Oklahoma 74105

- and -

Mr. Rick E. Bailey
KOCH ENGINEERING, INC.
P.O. Box 2256
Wichita, Kansas 67201

Attorneys for Koch & Van Gelder

By _____
Mr. Patterson Bond
BOND, BALMAN & HYMAN
2626 East 21st Street, Suite 9
Tulsa, Oklahoma, 74114

Attorneys for Schlumpf

entered

FILED

NOV 25 1991

Richard M. [illegible]
U. S. [illegible]
NORTHERN DISTRICT OF OKLAHOMA

IN THE UNITED STATES DISTRICT COURT FOR
THE EASTERN DISTRICT OF PENNSYLVANIA

IN RE: ASBESTOS PRODUCTS LIABILITY LITIGATION (NO. VI)	)	CIVIL ACTION NO. MDL 875

This Document Relates To:

IN THE UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF OKLAHOMA

CECIL J. RAY,	)	No. 88-C-926-B
CATHERINE L. REINHARD, individually and as Surviving Spouse of BILL J. REINHARD, Deceased,	)	No. 90-C-279-B
Plaintiffs,	)	
vs.	)	
OWENS-CORNING FIBERGLAS CORP., et al.,	)	
Defendants.	)	

ORDER ALLOWING
STIPULATED MOTION FOR DISMISSAL WITH PREJUDICE
AS TO DEFENDANT,
OWENS-CORNING FIBERGLAS CORPORATION

NOW on this 18th day of NOV., 1991, this matter comes before the Court upon the Stipulated Motion for Dismissal With Prejudice as to Defendant, Owens-Corning Fiberglas Corporation, filed by Plaintiffs and Defendant, Owens-Corning Fiberglas Corporation.

For good cause shown, said Motion is granted and the above-styled action is hereby dismissed with prejudice as to Defendant,

9

Owens-Corning Fiberglas Corporation, specifically reserving Plaintiff's rights as to all other parties or entities herein.

IT IS SO ORDERED.

UNITED STATES DISTRICT JUDGE

entered

FILED

NOV 15 1991

Richard M. [illegible]
U.S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

IN THE UNITED STATES DISTRICT COURT FOR
THE EASTERN DISTRICT OF PENNSYLVANIA

IN RE: ASBESTOS PRODUCTS LIABILITY LITIGATION (NO. VI)	)	CIVIL ACTION NO. MDL 875

x

This Document Relates To:

IN THE UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF OKLAHOMA

CECIL J. RAY,	)	No. 88-C-926-B
CATHERINE L. REINHARD, individually and as Surviving Spouse of BILL J. REINHARD, Deceased,	)	No. 90-C-279-B
Plaintiffs,	)	
vs.	)	
OWENS-CORNING FIBERGLAS CORP., et al.,	)	
Defendants.	)	

ORDER ALLOWING
STIPULATED MOTION FOR DISMISSAL WITH PREJUDICE
AS TO DEFENDANT,
OWENS-CORNING FIBERGLAS CORPORATION

NOW on this 18th day of NOV, 1991, this matter comes before the Court upon the Stipulated Motion for Dismissal With Prejudice as to Defendant, Owens-Corning Fiberglas Corporation, filed by Plaintiffs and Defendant, Owens-Corning Fiberglas Corporation.

For good cause shown, said Motion is granted and the above-styled action is hereby dismissed with prejudice as to Defendant,

9

Owens-Corning Fiberglas Corporation, specifically reserving Plaintiff's rights as to all other parties or entities herein.

IT IS SO ORDERED.

UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA, Plaintiff, vs. FRED HENRY MORLEY, III, a/k/a FRED MORLEY, III; JOYCE WOELLER a/k/a JOYCE STRAW a/k/a JOYCE A. STRAW f/k/a JOYCE ANN MORLEY f/k/a JOYCE MORLEY; COUNTY TREASURER, Ottawa County, Oklahoma; and BOARD OF COUNTY COMMISSIONERS, Ottawa County, Oklahoma, Defendants.	)	CIVIL ACTION NO. 90-C-0130-C

DEFICIENCY JUDGMENT

This matter comes on for consideration this 25th day of November, 1991, upon the Motion of the Plaintiff, United States of America, acting on behalf of the Secretary of Veterans Affairs, for leave to enter a Deficiency Judgment. The Plaintiff appears by Tony M. Graham, United States Attorney for the Northern District of Oklahoma, through Kathleen Bliss Adams, Assistant United States Attorney, and the Defendants, Fred Henry Morley, III a/k/a Fred Morley, III and Joyce Woeller a/k/a Joyce Straw a/k/a Joyce A. Straw f/k/a Joyce Ann Morley f/k/a Joyce Morley, appear neither in person nor by counsel.

The Court being fully advised and having examined the court file finds that a copy of Plaintiff's Motion was mailed to Fred Henry Morley, III a/k/a Fred Morley, III, Route 2, Box 111, Collinsville, Oklahoma 74021; and Joyce Woeller a/k/a Joyce Straw

a/k/a Joyce A. Straw f/k/a Joyce Ann Morley f/k/a Joyce Morley, 1205 B Street, Northeast, Miami, Oklahoma 74354; and all counsel and parties of record.

The Court further finds that the amount of the Judgment rendered on May 16, 1990, in favor of the Plaintiff United States of America, and against the Defendants, Fred Henry Morley, III a/k/a Fred Morley, III and Joyce Woeller a/k/a Joyce Straw a/k/a Joyce A. Straw f/k/a Joyce Ann Morley f/k/a Joyce Morley, with interest and costs to date of sale is $29,420.21.

The Court further finds that the appraised value of the real property at the time of sale was $16,500.00.

The Court further finds that the real property involved herein was sold at Marshal's sale, pursuant to the Judgment of this Court entered May 16, 1990, for the sum of $15,600.00 which is less than the market value.

The Court further finds that the Marshal's sale was confirmed pursuant to the Order of this Court on the 7th day of June, 1991.

The Court further finds that the Plaintiff, United States of America on behalf of the Secretary of Veterans Affairs, is accordingly entitled to a deficiency judgment against the Defendants, Fred Henry Morley, III a/k/a Fred Morley, III and Joyce Woeller a/k/a Joyce Straw a/k/a Joyce A. Straw f/k/a Joyce Ann Morley f/k/a Joyce Morley, as follows:

Principal Balance as of 5/16/90		$21,845.58
Interest		5,565.30
Late Charges to Date of Judgment		312.40
Appraisal by Agency		425.00
Management Broker Fees to Date of Sale		951.55
Abstracting		129.00
1988 Taxes		46.83
1989 Taxes		144.55
TOTAL		$29,420.21
Less Credit of Appraised Value	-	16,500.00
DEFICIENCY		$12,920.21

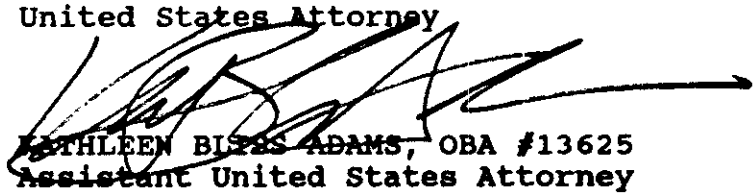
plus interest on said deficiency judgment at the legal rate of 4.98 percent per annum from date of deficiency judgment until paid; said deficiency being the difference between the amount of Judgment rendered herein and the appraised value of the property herein.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the United States of America on behalf of the Secretary of Veterans Affairs have and recover from Defendants, Fred Henry Morley, III a/k/a Fred Morley, III and Joyce Woeller a/k/a Joyce Straw a/k/a Joyce A. Straw f/k/a Joyce Ann Morley f/k/a Joyce Morley, a deficiency judgment in the amount of $12,920.21, plus interest at the legal rate of 4.98 percent per annum on said deficiency judgment from date of judgment until paid.

/s/ H. Dale Cook
UNITED STATES DISTRICT JUDGE

APPROVED AS TO FORM AND CONTENT:

TONY M. GRAHAM
United States Attorney



KATHLEEN BIRRS ADAMS, OBA #13625
Assistant United States Attorney
3600 U.S. Courthouse
Tulsa, Oklahoma 74103
(918) 581-7463

KBA/css

Deficiency Judgment
Civil Action No. 90-C-0130-C

11-08-91
EWW:fw
OBA #9824

IN THE UNITED STATES DISTRICT COURT OF THE
NORTHERN DISTRICT OF OKLAHOMA

WALTER RAY HARVEY,

Plaintiff,

vs.

DAN HORNE,

Defendant.

Case No. 90-C-1001-E

JUDGMENT

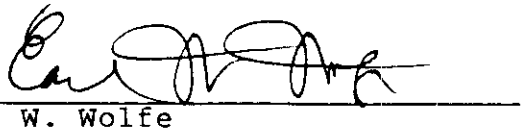
This action came on for trial before the Court and a Jury, the Honorable H. Dale Cook, District Judge, presiding, and the issues having been duly tried and the jury having duly rendered its verdict,

IT IS ORDERED AND ADJUDGED that the plaintiff, Walter Ray Harvey recover of the defendant, Dan Horne, the sum of $3,000 as actual damages and the sum of $500 as punitive damages, an aggregate judgment of $3,500, together with interest on the actual damages of $3,000 at the rate of 11.71 per cent per annum from the 28th day of November, 1990, until the date of judgment and with interest on the entire aggregate judgment from the date of judgment until paid at the rate of 5.42 per cent per annum, together with his costs herein incurred.

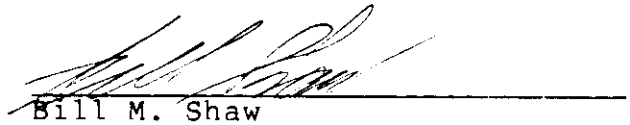
Entered this 25 day of November, 1991.

s/H. DALE COOK
U. S. DISTRICT JUDGE

APPROVED AS TO FORM:



Earl W. Wolfe
Attorney for the Plaintiff



Bill M. Shaw
Attorney for Defendant

11-08-91
EWW:fw
OBA #9824

IN THE UNITED STATES DISTRICT COURT OF THE NORTHERN DISTRICT OF OKLAHOMA

WALTER RAY HARVEY,

Plaintiff,

vs.

DAN HORNE,

Defendant.

Case No. 90-C-100-C

FILED
NOV 25 1991
Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

JUDGMENT

This action came on for trial before the Court and a Jury, the Honorable H. Dale Cook, District Judge, presiding, and the issues having been duly tried and a verdict having been directed for the defendants, Dan Wheatley, Tom Chambers, Ronnie Riley, Scott Jones, Larry Hayes, Wade White, Fred Rice, and Bill Aycock,

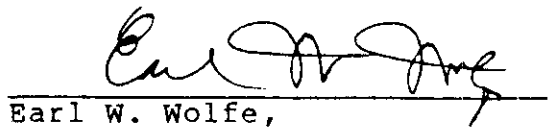
IT IS ORDERED AND ADJUDGED that the plaintiff take nothing, that the action be dismissed on the merits, and that the defendants, Dan Wheatley, Tom Chambers, Ronnie Riley, Scott Jones, Larry Hayes, Wade White, Fred Rice, and Bill Aycock recover of the plaintiff, Walter Ray Harvey, their costs of action.

Entered this 25 day of November, 1991.

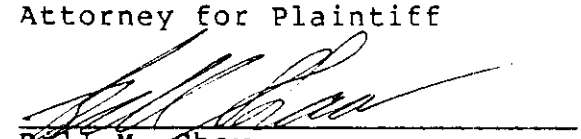
s/H. DALE COOK

U. S. DISTRICT JUDGE

APPROVED AS TO FORM:



Earl W. Wolfe,
Attorney for Plaintiff



Bill M. Shaw
Attorney for Defendants

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA Plaintiff, vs. CATHY L. GARY, Defendant.	)	CIVIL ACTION NO. 91-C-552-B

NOTICE OF DISMISSAL

COMES NOW the United States of America by Tony M. Graham, United States Attorney for the Northern District of Oklahoma, Plaintiff herein, through Kathleen Bliss Adams, Assistant United States Attorney, and hereby gives notice of its dismissal, pursuant to Rule 41, Federal Rules of Civil Procedure, of this action without prejudice. It appears that the Defendant in the captioned case has not been located within the Northern District of Oklahoma, and therefore attempts to serve Cathy L. Gary have been unsuccessful.

Dated this 20th day of November, 1991.

UNITED STATES OF AMERICA
TONY M. GRAHAM
United States Attorney

KATHLEEN BLISS ADAMS, OBA #13625
Assistant United States Attorney
3600 United States Courthouse
Tulsa, Oklahoma 74103
(918) 581-7463

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

BARBARA M. HARRIS,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
LOUIS W. SULLIVAN. M.D., Secretary of Health and Human Services,	)	
	)	
	)	**CASE NO. 90-C-639-B**
Defendant.		

ORDER

Upon the review of the defendant's motion to remand it is HEREBY ORDERED that this case be remanded for further administrative action to provide an award of disability benefits to the plaintiff pursuant to 42 U.S.C. § 405(g).

Dated this 25 day of Nov, 1991.

S/ THOMAS R. BRETT

THOMAS R. BRETT
United States District Judge

Submitted By:

Kathleen Bliss Adams, OBA 13625
Assistant United States Attorney
3900 US Courthouse
Tulsa, Oklahoma 74103

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

PHILLIP A WRIGHT,
Personal Representative of
the Estate of Helen Wright,

Plaintiff,

vs.

SPALDING & EVENFLO COMPANIES, INC., d/b/a EVENFLO JUVENILE FURNITURE COMPANY, a/k/a QUESTOR JUVENILE FURNITURE COMPANY; EVENFLO JUVENILE FURNITURE COMPANY; and QUESTOR JUVENILE FURNITURE COMPANY,

Defendants.

Case No. 91 C 442 B

FILED

NOV 22 1991

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

ORDER

In accordance with the Stipulations filed herewith, the Court finds, orders, adjudges and decrees that Defendant Questor Juvenile Furniture Company and Defendant Evenflo Juvenile Furniture Company hereby are dismissed from this action without prejudice to the bringing of any future action thereon.

S/ THOMAS R. BRETT

UNITED STATES DISTRICT JUDGE

RICHARD M. ELDRIDGE, OBA#32665
2800 Fourth National Bank Building
Tulsa, Oklahoma 74119

LOYAL J. ROACH, OBA #37615
Suite 660, Park Centre
525 South Main Mall
Tulsa, Oklahoma 74103

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

NOV 22 1991

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY, Plaintiff, vs. ANITA HEAD a/k/a ANITA FRAZIER and JERRY OWENS, Defendants.	Case No. 90-C-1014-B
	CONSOLIDATED
JERRY OWENS, Plaintiff, vs. ANITA FRAZIER, now ANITA HEAD, Defendant, and STATE FARM GENERAL INSURANCE COMPANY, Garnishee.	Case No. 91-C-90-B

O R D E R

This matter comes on for consideration of Plaintiff State Farm Mutual Automobile Insurance Company's (State Farm) Motion For Summary Judgment.

State Farm lists nine material facts as to which, it alleges, no genuine issue exists. In response, Defendant Jerry Owens (Owens) does not dispute any of State Farm's material facts except as to when State Farm was notified by the insured, Leon Head (Head) that Anita Frazier Head (Frazier) operated Leon Head's vehicle and an accident occurred during such operation.

State Farm's statement of material facts are essentially as follows:

1. On February 16, 1982, Owens was involved in an automobile accident with Anita Frazier (now Head). Frazier was driving a 1977 Chevrolet Silverado Pickup Truck owned by her then boyfriend, Leon Head.

2. On December 8, 1982, Owens sued Frazier for injuries related to the accident in Tulsa County District Court, CT82-1098. On December 9, 1982, Frazier was served with Summons.

3. On February 11, 1983, default judgment was rendered against Frazier for $263,876.65, including $2,126.65 medical bills, $6,750 lost wages, $5,000 future medical, $2,500 attorneys fees and $250,000 in pain and suffering.

4. Frazier appeared at an Asset Hearing in CT82-1098 on February 23, 1989. Frazier states by affidavit that she did not contact State Farm about the accident or suit until she discussed it with a State Farm representative after the 1989 Asset Hearing. Tamara Poulton, Claim Superintendent for State Farm, states by affidavit that State Farm did not receive notice of the accident or the state court suit until after the asset hearing in February 1989, having been notified by an investigator working on behalf of Owens who was seeking to determine if State Farm had any coverage for Frazier.

5. State Farm engaged attorneys, under a reservation of rights, to represent Frazier in attempting to set aside the default judgment entered in CT82-1098. On September 24, 1990, state Judge

Boudreau issued Findings of Fact and Conclusions of Law in Tulsa County District Court Case No. CJ90-0686 in which he found that Frazier was (properly) served with Summons and that the judgment entered in CT82-1098 should not be set aside or vacated.

7. On the date of the accident, State Farm had in force and effect a liability insurance policy, # 169-4817-D08-36 (Policy-4817), issued to Leon Head as named insured, listing a 1975 Chevrolet Pickup Truck as the described vehicle. The 1975 Chevrolet Pickup Truck, had previously been stolen, and the 1977 Chevrolet Silverado Pickup Truck mentioned in paragraph 1 above had been purchased by Head as a replacement for the stolen 1975 vehicle.[1] The 1977 Pickup truck was a Newly Acquired Vehicle under Policy 4817.

8. Owens has also made claim under policy number 178-9055-F27-36 (Policy 9055). Policy 9055 was not in effect on February 16, 1982, the date of the accident. Also Policy 9055 covered a 1968 Chevrolet which was not involved in the subject accident.

9. State Farm had no policies in effect for Anita Frazier.

In response to State Farm's statement of undisputed material facts as to which there is no genuine dispute, Owens sets forth his "Material Facts as to Which a Genuine Dispute Exists", as follows:

1. When Plaintiff (State Farm) was notified of the fact that

---

[1] The Court notes that in the affidavit of Leon Head the following appears: "4. On February 24, 1982 I requested State Farm to substitute the 1977 Pickup for the 1975 Pickup on policy No. 169 4817 D08 36." What does *not* appear in Head's affidavit is any statement that he notified State Farm of the accident involving the 1977 Pickup which had occurred 8 days earlier.

LEON HEAD had permitted ANITA FRAZIER HEAD to operate his insured vehicle and that an accident had occurred during operation by such permissive driver.

2. Whether LEON HEAD, the policy owner, had advised Plaintiff (State Farm) of the fact of such accident prior to the time ANITA HEAD acknowledges having notified Plaintiff of such fact.

Owens' Genuine Dispute 1 above is answered by the affidavits of Anita Frazier Head, Tamara Poulton, and Leon Head, Plaintiff's Exhibits 5, 6 and 9, respectively. State Farm was not notified of the accident, the facts of which would have implicated Anita Frazier as the driver of Leon Head's vehicle, until February, 1989. Owens' Genuine Dispute 2 above is not evidentially supported by Owens. However, Leon Head's affidavit, offered by State Farm, fails to reflect that any notification to State Farm occurred prior to February, 1989. The lack of notification to State Farm is also an undisputed fact set forth in the affidavit of Tamara Poulton.

The notification, or lack thereof, to State Farm earlier than in February, 1989, is in the Court's view, the most critical fact herein. Owens must do more, to survive a motion for summary judgment, than merely suggest a genuine dispute exists as to whether either Head, Frazier or anyone advised State Farm of the fact of such accident and related litigation prior to the time Frazier acknowledges having informed State Farm of such fact.

Summary judgment pursuant to Fed.R.Civ.P. 56 is appropriate where "there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law."

Celotex Corp. v. Catrett, 477 U.S. 317, 106 S.Ct. 2548, 91 L.Ed.2d 265, 274 (1986); **Anderson v. Liberty Lobby, Inc.**, 477 U.S. 242, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986); **Windon Third Oil and Gas v. Federal Deposit Insurance Corporation**, 805 F.2d 342 (10th Cir. 1986). *cert den.* 480 U.S. 947 (1987). In **Celotex**, 477 U.S. at 317 (1986), it is stated:

> "The plain language of Rule 56 (c) mandates the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial."

To survive a motion for summary judgment, nonmovant "must establish that there is a genuine issue of material facts..." Nonmovant "must do more than simply show that there is some metaphysical doubt as to the material facts." **Matsushita v. Zenith**, 475 U.S. 574, 585, 106 S.Ct. 1348, 89 L.Ed.2d 538, (1986).

A liability insurance policy, being a contract, **Silver v. Slusher**, 770 P.2d 878 (Ok.1988) *cert. den.* 110 S.Ct. 70, is an indemnity against liability as opposed to an indemnity against loss. **Seaborn Preferred Acc. Ins. Co. of New York**, 246 P.2d 365 (Ok.1952). The Supreme Court of Oklahoma has held, in **Travelers Ins. v. L.V. French Tr. Serv.**, 770 P.2d 551 (Ok. 1988): "An action to enforce indemnity from liability accrues when the event for which indemnity is due occurs . . ". See, also, 15 O.S. § 427.

In Oklahoma, the statute of limitations on an action begins to run when the cause of action accrues, and an accrual occurs when

the claimant first could have maintained his action to a successful conclusion. **Matter of Estate of Crowl**, 737 P.2d 911 (Ok. 1987).

The Court concludes that any cause of action under the insurance contract on the 1977 vehicle would have first accrued when Owens secured his judgment against Frazier on February 11, 1983. The Court further concludes that such right of action is controlled by 12 O.S. §95, the limitations statute dealing with written contracts, which provides that an action must be commenced within five years from the time the cause of action accrues. **Matter of Estate of Crowl**, *supra*, not done in this case. Therefore, any action which could have been maintained under Policy 4817 must have been filed by February 11, 1988, which was not done, thereby barring any claim under the Policy.

Owens also seeks to establish State Farm liability predicated upon Oklahoma's Compulsory Financial Responsibility Statutes. 47 O.S. §§ 7-600, *et seq.*, citing **Young v. Mid-Continent Casualty Co.**, 743 P.2d 1084 (Ok. 1987) and **Equity Mutual Insurance Co. v. Spring Valley Wholesale Nursery, Inc.**, 747 P.2d 947 (Ok. 1987). The Court reads neither of these cases, nor the Financial Responsibility statutes, as providing relief to Owens under the facts herein.

The Court concludes State Farm was not given proper and timely notice of either the accident or the litigation resulting in a judgment against Frazier, which notice was due State Farm under the policy in issue. This lack of notice also prevents the imposition of liability under the Policy on the facts established herein.

The Court considers the issues relating to policies which were

not in effect at the time of the accident and/or did not provide coverage for the 1977 vehicle involved in the accident are without substance.

The Court concludes State Farm's Motion For Summary Judgment, as to the Declaratory Judgment Action (90-C-1014-B), against Jerry Owens, should be and the same is hereby SUSTAINED. The Court further concludes the Garnishment Action (91-C-90-B) against State Farm General Insurance Company, *et al* is rendered moot by the Court's decision in the Declaratory Judgment matter and is, accordingly, DISMISSED.

IT IS SO ORDERED this 22nd day of November, 1991.

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

TERALD DOUGLAS Plaintiff, V. THE COOPER GROUP, A NORTH CAROLINA CORP., THE COOPER GROUP, INC., & COOPER INDUSTRIES, INC. A NORTH CAROLINA CORP. Defendants.	)	CASE NO. 90-C-230-B

O R D E R

This matter comes on for consideration of Defendants' (hereinafter Cooper or Defendants) Motion for Summary Judgment and Motion In Limine.

Plaintiff Terald Douglas (Douglas) brings a manufacturer's product liability action alleging he sustained personal injury, on October 12, 1988, by using a Cooper-made hammer to strike another hammer causing a chip from the Cooper hammer to hit his right eye.

Douglas alleges the hammer 1) was defectively manufactured because the face of the hammer was too hard, thereby causing it to chip; and 2) was defective because the hammer failed to contain a warning as to the proper usage as to which the hammer could be put.

Defendants raise the affirmative defense of misuse or abnormal use of the product; that any injuries suffered by Plaintiff were not caused by Defendants but by Plaintiff's voluntary assumption of

a known risk or danger.

Defendants move for Summary Judgment averring no material factual issues remain; that the "Plumb" hammer, which a Cooper-acquired company (Ames-McDonough Corp.) made in 1973, had an adequate warning tag hanging from the hammer and another warning fixed on the fiberglass hand by adhesive label, both of which warned that striking the face of the hammer against a hard object may cause the face to chip, causing injury; that Douglas' use of the hammer (hitting another hammer to wedge apart a frame) was contrary to the warnings and the cause of Douglas' injury.

Douglas counters that disputed facts exist as to whether there was a tag hanging of the hammer 15 years ago when he bought it for $18; also he disputes whether there was an adhesive label warning on the handle when he bought it and even if one existed, it was not permanent and therefore in violation of American National Standards Institute (ANSI) standards.

Summary judgment pursuant to Fed.R.Civ.P. 56 is appropriate where "there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." **Celotex Corp. v. Catrett**, 477 U.S. 317, 106 S.Ct. 2548, 91 L.Ed.2d 265, 274 (1986); **Anderson v. Liberty Lobby, Inc.**, 477 U.S. 242, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986); **Windon Third Oil and Gas v. Federal Deposit Insurance Corporation**, 805 F.2d 342 (10th Cir. 1986). *cert den.* 480 U.S. 947 (1987). In **Celotex**, 477 U.S. at 317 (1986), it is stated:

"The plain language of Rule 56 (c) mandates

> the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial."

To survive a motion for summary judgment, nonmovant "must establish that there is a genuine issue of material facts..." Nonmovant "must do more than simply show that there is some metaphysical doubt as to the material facts." **Matsushita v. Zenith**, 475 U.S. 574, 585, 106 S.Ct. 1348, 89 L.Ed.2d 538, (1986).

The Court enters its Order as follows:

Partial Summary Judgment is granted, holding that a warning was in fact given on the 1973 manufactured hammer but factual issues remain as to the adequacy of that warning, whether the warning was sufficiently permanent, and whether Plaintiff would have heeded that warning.

Partial Summary Judgment is granted, holding that the 1975 ANSI standard is not relevant as to the 1973 manufactured hammer.

The Court concludes that new warnings may be relevant (under F.Rules Evid. 407) if Defendants say such improved warning was not feasible (feasibility is controverted) or that Plaintiff saw the warning prior to the accident.

The Court further concludes that factual issues also exist as to the defect in the 1973 hammer and causation of the injury in issue.

The Court further holds that the 1988 exemplar hammer will not be allowed into evidence because the new warning on the new hammer

would not be relevant, unless it can be established Plaintiff purchased same before the accident.

IT IS SO ORDERED this 22nd day of November, 1991.

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

JEFFERY DEAN KING,)
)
Plaintiff,)
)
v.) 91-C-21-E
)
RON CHAMPION,)
)
Defendant.)

ORDER

The Court has for consideration the Report and Recommendation of the United States Magistrate Judge filed October 22, 1991 in which the Magistrate Judge recommended that Respondent's Motion to Dismiss be granted.

No exceptions or objections have been filed and the time for filing such exceptions or objections has expired.

After careful consideration of the record and the issues, the Court has concluded that the Report and Recommendation of the United States Magistrate Judge should be and hereby is adopted and affirmed.

It is, therefore, Ordered that Respondent's Motion to Dismiss is granted.

Dated this 22nd day of November, 1991.

JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE

NORTHERN DISTRICT OF OKLAHOMA

BOARD OF TRUSTEES OF THE PIPELINE INDUSTRY BENEFIT FUND, Plaintiff, vs. MECHANICAL WELDING, INC., Defendants.	)	FILED NOV 22 1991 Richard M. Lawrence, Clerk U. S. DISTRICT COURT NORTHERN DISTRICT OF OKLAHOMA CIVIL ACTION NO. 91-C-592-B

ADMINISTRATIVE CLOSING ORDER

The defendant having filed its petition in bankruptcy and these proceeding being stayed thereby, it is hereby ordered that the Clerk administratively terminate this action in his records, without prejudice to the rights of the parties to reopen the proceedings for good cause shown for the entry of any stipulation or order, or for any other purpose required to obtain a final determination of the litigation. **(Plaintiff agrees per telephone call.)**

IF, within 60 days of a final adjudication of the bankruptcy proceedings, the parties have not reopened for the purpose of obtaining a final determination herein, this action shall be deemed dismissed with prejudice.

IT IS SO ORDERED this 22nd day of Nov., 1991.

UNITED STATES DISTRICT JUDGE
THOMAS R. BRETT

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IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

LARRY J. GREGG,

Petitioner,

v.

RON CHAMPION,

Respondent.

90-C-460-E

ORDER

The court has for consideration the Report and Recommendation of the Magistrate Judge filed October 23, 1991, in which the Magistrate Judge recommended that petitioner's Amended Petition for a Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2254 be denied. No exceptions or objections have been filed and the time for filing such exceptions or objections has expired.

After careful consideration of the record and the issues, the court has concluded that the Report and Recommendation of the Magistrate Judge should be and hereby is affirmed.

It is therefore Ordered that petitioner's Amended Petition for a Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2254 is denied.

Dated this 22nd day of November, 1991.

JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

PARISH, LINDA W.

Plaintiff,

vs.

BANCOKLAHOMA, CORP., d/b/a BANC OF OKLA., CITY PLAZA, k/n/a BANK OF OKLA., N.A.

Defendant.

No. 90-C-0202-E

ADMINISTRATIVE CLOSING ORDER

The Defendant having filed a Chapter 11 petition in bankruptcy and these proceedings being stayed thereby, it is hereby ordered that the Clerk administratively terminate this action in his records, without prejudice to the rights of the parties to reopen the proceedings for good cause shown for the entry of any stipulation or order, or for any other purpose required to obtain a final determination of the litigation.

If, within thirty (30) days of a final adjudication of the bankruptcy proceedings the parties have not reopened for the purpose of obtaining a final determination herein, this action shall be deemed dismissed with prejudice.

ORDERED this 22nd day of November 1991.

HON. JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY, Plaintiff, vs. ANITA HEAD a/k/a ANITA FRAZIER and JERRY OWENS, Defendants.	Case No. 90-C-1014-B CONSOLIDATED
JERRY OWENS, Plaintiff, vs. ANITA FRAZIER, now ANITA HEAD, Defendant, and STATE FARM GENERAL INSURANCE COMPANY, Garnishee.	Case No. 91-C-90-B

J U D G M E N T

In accord with the Order filed herein on November 22nd, 1991, sustaining State Farm's Motion For Summary Judgment as to the Declaratory Judgment Action, and dismissing the Garnishment Action as moot, the Court hereby enters Judgment in favor of State Farm Mutual Automobile Insurance Company and against Jerry Owens on the Declaratory Judgment Action (Case No. 90-C-1014-B). The Court also enters Judgment in favor of State Farm General Insurance, *et al*, the Garnishees in Case No. 91-C-90-B and against Jerry Owens on the

Garnishment Action. Jerry Owens shall take nothing of his claims against State Farm Mutual Automobile Insurance Company or State Farm General Insurance, *et al*. Costs are assessed against Jerry Owens if timely applied for under for under Local Rule 6.

DATED this 22nd day of November, 1991.

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA, Plaintiff, vs. JUDITH F. HULL, COUNTY TREASURER, Osage County, Oklahoma; and BOARD OF COUNTY COMMISSIONERS, Osage County, Oklahoma, Defendants.	CIVIL ACTION NO. 91-C-403-B

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 22nd day of Nov., 1991. The Plaintiff appears by Tony M. Graham, United States Attorney for the Northern District of Oklahoma, through Phil Pinnell, Assistant United States Attorney; the Defendants, County Treasurer, Osage County, Oklahoma, and Board of County Commissioners, Osage County, Oklahoma, appear by John S. Boggs, Jr., Assistant District Attorney, Osage County, Oklahoma.

The Court, being fully advised and having examined the court file, finds that the Defendant, Judith F. Hull, was served with Summons and Complaint on July 29, 1991; that Defendant, County Treasurer, Osage County, Oklahoma, acknowledged receipt of Summons and Complaint on June 17, 1991; and that Defendant, Board of County Commissioners, Osage County, Oklahoma, acknowledged receipt of Summons and Complaint on June 17, 1991.

It appears that the Defendants, County Treasurer, Osage County, Oklahoma, and Board of County Commissioners, Osage County, Oklahoma, filed their Answer on June 18, 1991; and that

the Defendant, Judith F. Hull, filed her Answer on August 16, 1991.

The Court further finds that this is a suit based upon a certain mortgage note and for foreclosure of a mortgage securing said mortgage note upon the following described real property located in Osage County, Oklahoma, within the Northern Judicial District of Oklahoma:

> Lot 8, Block 8, Skyview Addition to the City of Pawhuska.
>
> Subject, however, to all valid outstanding easements, rights of way, mineral leases, mineral reservations and mineral conveyances of record.

The Court further finds that on June 3, 1987, the Defendant, Judith F. Hull, executed and delivered to the United States of America, acting through the Farmers Home Administration, her promissory note in the amount of $37,500.00, payable in monthly installments, with interest thereon at the rate of 8.50 percent (8.50%) per annum.

The Court further finds that as security for the payment of the above-described note, the Defendant, Judith F. Hull, executed and delivered to the United States of America, acting through the Farmers Home Mortgage, a mortgage dated June 3, 1987, covering the above-described property. Said mortgage was recorded on June 3, 1987, in Book 715, Page 579, in the records of Osage County, Oklahoma.

The Court further finds that on June 3, 1987, the Defendant, Judith F. Hull, executed and delivered to the United States of America, acting through the Farmers Home

Administration, an Interest Credit Agreement pursuant to which the interest rate on the above-described note and mortgage was reduced.

The Court further finds that on April 28, 1988, the Defendant, Judith F. Hull, executed and delivered to the United States of America, acting through the Farmers Home Administration, an Interest Credit Agreement pursuant to which the interest rate on the above-described note and mortgage was reduced.

The Court further finds that the Defendant, Judith F. Hull, made default under the terms of the aforesaid note, mortgage, and interest credit agreements, by reason of her failure to make the monthly installments due thereon, which default has continued, and that by reason thereof the Defendant, Judith F. Hull, is indebted to the Plaintiff in the principal sum of $35,881.80, plus accrued interest in the amount of $4,197.58 as of October 26, 1990, plus interest accruing thereafter at the rate of 8.5 percent per annum or $8.3560 per day until judgment, plus interest thereafter at the legal rate until fully paid, and the further sum due and owing under the interest credit agreements of $5,204.93, plus interest on that sum at the legal rate from judgment, and the costs of this action in the amount of $57.40 ($20.00 docket fees, $29.40 fees for service of Summons and Complaint, $8.00 fee for recording Notice of Lis Pendens).

The Court further finds that the Defendant, County Treasurer, Osage County, Oklahoma, has a lien on the property which is the subject matter of this action by virtue of ad

valorem taxes in the amount of $264.28, plus penalties and interest, for the year of 1990. Said lien is superior to the interest of the Plaintiff, United States of America.

The Court further finds that the Defendant, County Treasurer, Osage County, Oklahoma, has a lien on the property which is the subject matter of this action by virtue of personal property taxes in the amount of $3.53, plus penalties and interest. Said lien is inferior to the interest of the Plaintiff, United States of America.

The Court further finds that the Defendant, Judith F. Hull, claims no right, title or interest in the subject real property.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment against the Defendant, Judith F. Hull, in the principal sum of $35,881.80, plus accrued interest in the amount of $4,197.58 as of October 26, 1990, plus interest accruing thereafter at the rate of 8.5 percent per annum or $8.3560 per day until judgment, plus interest thereafter at the current legal rate of 4.98 percent per annum until paid, and the further sum due and owing under the interest credit agreements of $5,204.93, plus interest on that sum at the legal rate from judgment until paid, plus the costs of this action in the amount of $57.40 ($20.00 docket fees, $29.40 fees for service of Summons and Complaint, $8.00 fee for recording Notice of Lis Pendens), plus any additional sums advanced or to be advanced or expended during this foreclosure action by Plaintiff for

taxes, insurance, abstracting, or sums for the preservation of the subject property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendant, County Treasurer, Osage County, Oklahoma, have and recover judgment in the amount of $264.28, plus penalties and interest, for ad valorem taxes for the year 1990, plus the costs of this action.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendant, County Treasurer, Osage County, Oklahoma, have and recover judgment in the amount of $3.53 for personal property taxes for the year 1990, plus the costs of this action.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendant, Judith F. Hull, has no right, title, or interest in the subject real property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that upon the failure of said Defendant, Judith F. Hull, to satisfy the money judgment of the Plaintiff herein, an Order of Sale shall be issued to the United States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell, according to Plaintiff's election with or without appraisement, the real property involved herein and apply the proceeds of the sale as follows:

First:

In payment of the costs of this action accrued and accruing incurred by the Plaintiff, including the costs of sale of said real property;

Second:

In payment of Defendant, County Treasurer, Osage County, Oklahoma, in the amount of $264.28, plus penalties and interest, for ad valorem taxes which are presently due and owing on said real property;

Third:

In payment of the judgment rendered herein in favor of the Plaintiff;

Fourth:

In payment of Defendant, County Treasurer, Osage County, Oklahoma, in the amount of $3.53, personal property taxes which are currently due and owing.

The surplus from said sale, if any, shall be deposited with the Clerk of the Court to await further Order of the Court.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that from and after the sale of the above-described real property, under and by virtue of this judgment and decree, all of the Defendants and all persons claiming under them since the filing of the Complaint, be and they are forever barred and foreclosed of any right, title, interest or claim in or to the subject real property or any part thereof.

UNITED STATES DISTRICT JUDGE

APPROVED:

TONY M. GRAHAM
United States Attorney

PHIL PINNELL, OBA #7169
Assistant United States Attorney
3600 U.S. Courthouse
Tulsa, Oklahoma 74103
(918) 581-7463

JUDITH F. HULL, acting Pro Se

JOHN S. BOGGS, JR., OBA #0920
Assistant District Attorney
Attorney for Defendants,
County Treasurer and
Board of County Commissioners,
Osage County, Oklahoma

Judgment of Foreclosure
Civil Action No. 91-C-403-B

PP/esr

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

JOSEPHINE RUSSELL,

Plaintiff,

vs.

MARRIOTT CORPORATION HEALTH CARE SERVICES,

Defendant.

Case No. 91-C-749-E

ORDER

UPON the Joint Stipulation For Dismissal With Prejudice filed herein by the parties, it is hereby

ORDERED that this case is dismissed with prejudice, each party to bear her or its own costs, expenses and attorneys' fees.

DATED this 22 day of November, 1991.

JUDGE OF THE DISTRICT COURT

FIRM ID #42

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

NOV 21 1991

Richard M. Lawrence, Clerk
U.S. DISTRICT COURT

THRIFTY RENT-A-CAR SYSTEM, INC., an Oklahoma corporation,

Plaintiff,

vs.

ELCO AUTO SYSTEMS, INC., a foreign corporation; JOHN T. LASKEY, an individual; and MICHAEL STRAUSS, an individual,

Defendants.

Case No. 91-C-624-B

Notice of DISMISSAL

COMES NOW the Plaintiff, Thrifty Rent-A-Car System, Inc., pursuant to Rule 41(a)(1) of the Federal Rules of Civil Procedure, and hereby dismisses its Complaint filed herein.

Respectfully submitted,

COMFORT, LIPE & GREEN, P.C.

By: Richard A Paschal

Richard A. Paschal #6927
Nancy G. Gourley #10317
2100 Mid-Continent Tower
401 South Boston Avenue
Tulsa, Oklahoma 74103
(918) 599-9400

ATTORNEYS FOR PLAINTIFF,
THRIFTY RENT-A-CAR SYSTEM, INC.

CERTIFICATE OF SERVICE

I hereby certify that on this 21 day of November, 1991, a true and correct copy of the within and foregoing document was mailed to the following with proper postage thereon fully prepaid:

John K. Antholis
Edwards & Antholis
22 Pine Street
Morristown, New Jersey 07960

Richard A Pascal

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STEELWORKERS OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	91-C-152-B
	)	
NORRIS SUCKER ROD DIVISION,	)	
	)	
Defendant.	)	

ORDER

Now before the Court is Plaintiff's Motion For Partial Summary Judgment. The issue is whether an arbitrator's ruling re-instating a union worker to his job should be enforced.[1] Plaintiff argues that the arbitrator's decision is binding and must be enforced as a matter of law. The Defendant, on the other hand, contends that the arbitrator's ruling is moot and should not be allowed.

Facts

The United Steelworkers of America and Local 4430 ("Union") and Norris Sucker Rod Division entered into a collective bargaining agreement on September 27, 1987. One part of that bargaining agreement deals with arbitration. It allows United Steelworkers to take a grievance dispute to arbitration under certain circumstances.

On March 16, 1990, Norris placed Dale Hightower, a 16-year employee, on a medical leave of absence. *Affidavit of Sue Allen (docket #13).* A week later, the Union filed

[1] *This Court has jurisdiction pursuant to 29 U.S.C. §185(a), which allows suits for violations of contracts between and employer and a labor organization in an industry affecting commerce.*

a grievance against Norris, requesting that Hightower be reinstated to his regular job with back pay and benefits. Norris officials denied the grievance. *Complaint, Exhibit B (docket #1).* The Union then exercised its option to appeal the decision to an arbitrator.

Norris and the Union stipulated to the arbitration procedure. The issue to be resolved by the arbitrator was whether Hightower had been improperly denied employment by Norris. Part of the stipulation included the following:

> **If the Arbitrator decides item number 2 above in the affirmative, i.e. employee was improperly denied employment, the remedy for such decision is reinstatement with all pay as defined by Joint Exhibit 1, and to all seniority rights, benefits, and to scheduled overtime from and after the date on which the employee was improperly denied employment.** *See Complaint, Exhibit C (docket #1).*

Arbitrator Dr. Harvey J. Blumenthal heard the grievance appeal on January 31, 1991. Nearly a month later, on February 26, 1991, he sustained the grievance, concluding that Norris had wrongfully denied Hightower employment since May 16, 1990.

Norris, however, refused to follow the arbitrator's ruling. Norris claimed that Hightower lied during the hearing about past absences from work. Prior to the hearing, records kept by Norris showed that Hightower had three unexcused absences. However, the affidavit of Sue Allen -- who kept track of Hightower's absences for Norris -- stated:

> **I attended the arbitration hearing before Dr. Blumenthal...at which Dale Hightower testified concerning these nine absences. In his testimony he recanted his previous statements to me that he was sick on any of those nine days but rather had doctor appointments and did not want to report for work because he didn't want to work only part of a day.** ***Exhibits To Defendant's Brief In Opposition To Plaintiffs' Motion For Partial Summary Judgment.***

Norris claims that Hightower's testimony increased his unexcused absences from three to seven by February 13, 1990, mandating his dismissal. *Defendant's Answer To*

Plaintiff's First Set of Interrogatories.[2] Article XXVI of the collective bargaining agreement allows Norris to terminate employees when they reach seven unexcused absences. Norris then fired Hightower.[3] The Union then filed a grievance on behalf of Hightower for the second termination on March 4, 1991. It filed this suit on March 13, 1991. On June 11, 1991, the Union filed a motion for Partial Summary Judgment *(docket #10).*

Summary Judgment Overview

The Union has moved for summary judgment pursuant to Rule 56(c) of the Federal Rules of Civil Procedure. It states, in part:

> **The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.**[4]

An issue of fact is material only when the dispute is over facts that might affect the outcome of the suit under governing law. *Anderson v. Liberty Lobby, 477 U.S. 242, 248, 106 S.Ct. 2505, 2510 (1986).* In addition, this Court examines the evidence in the light more favorable to Norris, who is the non-moving party. *Brown v. Parker-Hannifin Corp., 746 F.2d 1407, 1411 (10th Cir. 1984).*

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[2] *Prior to the hearing, records kept by Norris showed that Hightower missed 11 days of work between October 1, 1989 and March 13, 1990. He had an unexcused absence for "personal business" and an excused absence for a doctor appointment. Of the remaining nine days missed because of either an illness or a doctor's appointment, Allen said Hightower told her he had to miss the entire day because "he was too sick to come to work." Affidavit of Sue Allen, Defendants' Exhibits (docket #13).*

[3] *Norris argues that "had the Company [Norris] known the true facts concerning these absences, Mr. Hightower would have been terminated on that date." Defendant's Brief In Opposition To Plaintiffs' Motion For Partial Summary Judgment.*

[4] *The Advisory Committee, in discussing Rule 56, emphasize that "the very mission of the summary judgment procedure is to pierce the pleadings and to assess the proof in order to see whether there is a genuine need for trial."*

Legal Analysis

The issue here is not to evaluate the arbitrator's decision.[5] Instead, this Court must decide whether -- using Rule 56 as a backdrop -- the award should be enforced. The general rule in such circumstances is that "as long as the arbitrator's award draws its essence from the collective bargaining agreement and is not merely his own brand of industrial judgment, the award is legitimate. [6] *United Paperworkers Intern Union v. Misco, Inc., 484 U.S., 108 S.Ct. 364, 370 (1987).*

At first blush, this Court finds *United Steelworkers v. Dayton-Walther Corp., 657 F.Supp. 50, 53 (S.D. Ind. 1986),* persuasive. An employer terminated employee Dan Priest's seniority, which cost him an electrician's job. Priest filed a grievance, and the arbitrator reinstated Priest to the job. The employer then requested that Priest take a "return-to-work" physical examination. Priest failed the physical, and the employer disregarded the arbitrator's order. *Id.* Wrote the court:

> **It is clear that the Company failed to comply with Arbitrator Render's award ordering Priest reinstated to an electrician position. Priest was never actually placed back on the active payroll, returned to his job, or allowed to perform his work responsibilities. The Company conditioned Priests' reinstatement upon a successful completion of a return-to-work physical examination even though no such prerequisite was a part of the arbitration award.** *Id. at 55.*

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[5] *The function of the court is limited in this case. Writes the United States Supreme Court: "The courts, therefore, have no business weighing the merits of the grievance, considering whether there is equity in a particular claim, or determining whether there is particular language in the written instrument which will support the claim." Steelworkers v. American Mfg. Co., 363 U.S. 564, 567-568, 80 S.Ct. 1343, 1346 (1960).*

[6] *Exceptions do exist if the award is contrary to public policy or was procured through fraud or through the arbitrator's dishonesty. United Paperworkers, 108 S.Ct. at 371. Norris does not claim the award is against public policy nor does it accuse the arbitrator of dishonesty. Norris asserts that Hightower committed perjury at the hearing, and, as a result, the ruling should be voided due to fraud. Perjury can constitute fraud, which may void an arbitrator's ruling. Newark Stereotypers v. Morning Ledger Co., 397 F.2d 594, 600 (3rd Cir. 1968). But Norris' allegations, without more evidence, are not enough in this case to void the ruling because of fraud. In addition, the arbitrator discussed the absenteeism issue prior to making his ruling. See February 26, 1990 letter from Dr. Harvey J. Blumenthal.*

The court emphasized that reinstatement did not mean that Priest would have "perpetual job security." *Id.* In fact, the court concluded that Priest -- like any other employee -- would be subject to any lawful disciplinary action, layoff or discharge. *See Chicago Newspaper Guild v. Field Enterprises, Inc., 747 F.2d 1153 (7th Cir. 1984).*[7]

Similar to the above case, the parties here -- guided by the collective bargaining agreement -- agreed to arbitration concerning Hightower's absenteeism and/or medical condition. They agreed to specific procedures prior to the arbitration, including the fact that if the arbitrator ruled in Hightower's favor, Hightower would be reinstated "with all pay as defined by Joint Exhibit 1, and to all seniority rights, benefits, and to scheduled overtime from and after the date on which the employee was improperly denied employment."

The arbitrator then sustained Hightower's grievance. Four days later, similar to the scenario in *Dayton-Walther,* Norris terminates Hightower for too many unexcused absences from work.

Normally, such an award should be enforced. But the difficulty in this case is whether the March 23, 1990 and March 4, 1991 grievances overlap. Norris first terminates Hightower for medical reasons. Apparently, Hightower missed work as a result of his illness. The Union files a grievance, and an arbitrator then rules that Norris should return Hightower to work and give him back pay from May 13, 1990. Four days <u>after</u> the arbitrator's ruling, Norris officials decide that Hightower <u>should have been</u> terminated on

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[7] *The court wrote: "Should Priest, for instance, be unable to perform his duties as an electrician, the Company could take the steps necessary to correct the situation. This subsequent Company action, of course, if controverted, would be evaluated independently of the present action. <u>Id.</u> at 55.*

February 13, 1990 for "unexcused absenteeism."

Based on the record, the undersigned is unsure how the grievances differ. Both grievances involve the same employee. Both apparently focus on the fact that Hightower missed too work much. In addition, the Union argues in its motion that it wants back pay from May of 1990; Norris claims Hightower should have been dismissed three months earlier. Such a scenario indicates the grievances overlap. Faced with a similar predicament, a Tennessee federal court wrote:

> **At the very minimum, there exists therein the question of whether the issue presented by the latest grievance was the same issue as decided by the prior arbitration-award; that question, itself, is a matter to be resolved by the arbitrator rather than by this Court.** *Oil, Chemical and Atomic Workers International Union v. Great Lakes Research Corporation, 568 F.Supp. 772, 773 (E.D. Tenn. 1982).*

In the instant case, the question is whether the issue presented in Union's second grievance was the same issue decided by the prior arbitration award. Norris' has attempted to terminate Hightower twice for what appear to be the same reasons: too many unexcused absences. In the first, Norris termed the absences a "medical problem"; in the second, Norris simply said he was absent. The result is the same. And, while it appears that Blumenthal considered Hightower's unexcused absences in his arbitration ruling, the record is not clear on this point.

Conclusion

This case hinges on a balance of long-standing philosophies. Courts have concluded that an arbitrator's award should be enforced as long as it draws its essence from a collective bargaining agreement between the parties in dispute. However, the law also

warns courts about unduly interfering in labor disputes, especially in trying to second-guess or alter an arbitrator's decision.

Norris' timing is suspect. The arbitrator rules that Hightower should be reinstated; four days later, Norris -- alleging it discovered "new" information at the hearing -- does not honor the binding decision. Instead, Norris terminates Hightower. Such actions, especially if used as a ploy to circumvent the arbitrator's award, should not keep the arbitration award from being enforced.

However, Norris' contention that Hightower should have been dismissed on February 13, 1990 for absenteeism raises a question of fact which merits further evaluation. If Hightower should have been dismissed February 13, 1990 for unexcused absences, such a finding could alter the remedy for the arbitrator's award, or, perhaps, void the award. However, the undersigned believes that such issues should be first examined by the arbitrator before being addressed by this Court.

Therefore, it is the recommendation of the United States Magistrate Judge that Plaintiffs' Motion For Partial Summary Judgment is denied. Upon review, the undersigned further finds that the case should be and hereby is remanded back to the arbitrator to decide the following:

1) **Whether the issue presented by the Union's second grievance overlaps with the Union's first grievance, and**

2) **Whether all internal procedures, including arbitration, and including arbitration of the merits of the March 4, 1991 grievance pursuant to the collecting bargaining agreement, have been exhausted.**

Once the arbitrator has entered new findings, as above, the parties may re-urge any summary judgment or other motions to this Court.

Accordingly, this action is hereby stayed pending further review by the arbitrator. The arbitrator should conclude his inquiry and make new findings no later than February 3, 1992. The parties are to re-urge any dispositive motions within fifteen (15) days of that date, or the date of the arbitrator's filing.

SO ORDERED THIS 20TH day of NOVEMBER, 1991.

JEFFREY S. WOLFE
UNITED STATES MAGISTRATE JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

INA RUTH BROWN, Plaintiff, vs. LIFE INSURANCE COMPANY OF NORTH AMERICA, also known as CIGNA COMPANIES, AND CIGNA EMPLOYEE BENEFITS COMPANIES, Defendants.	)	Case No. 91-C-454-B

STIPULATION FOR DISMISSAL WITH PREJUDICE

The parties hereby stipulate that this action is dismissed with prejudice. All parties to bear his/her own attorneys' fees and costs.

Ina Ruth Brown
Ina Ruth Brown, Plaintiff

Howard D. Perkins
Howard D. Perkins, Jr.
Attorney for Plaintiff

J. Daniel Morgan
J. Daniel Morgan
Attorney for Defendants

JDM/11-91422/al

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

NOV 21 1991

Richard M. Lawrence, Clerk
U.S. DISTRICT COURT

HOLLY H. BADHAM and LYNN BADHAM, individually and as Trustee of the Lynn Badham Irrevocable Trust,

Plaintiffs,

vs.

BANK OF OKLAHOMA, N. A.,

Defendant.

No. 90-C-414-E

STIPULATION OF DISMISSAL WITH PREJUDICE

COME NOW the parties hereto, by their respective counsel, and pursuant to rule 41(a)(1), Fed. R. Civ. P., hereby stipulate and agree that the above-captioned cause be dismissed, with prejudice, each party to pay their own costs, pursuant to an agreed settlement entered into between the parties.

DATED this 21st day of November, 1991.

Respectfully submitted,

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